

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN CINDY YOUNKIN**, on March 7, 2001 at 3:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Ron Erickson (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Jeff Laszloffy (R)  
Rep. Bob Story (R)  
Rep. David Wanzenried (D)

**Members Excused:** Rep. Rick Dale, Vice Chairman (R)  
Rep. Rod Bitney (R)  
Rep. Bill Eggers (D)  
Rep. Rick Laible (R)  
Rep. Douglas Mood (R)  
Rep. Brett Tramelli (D)

**Members Absent:** None.

**Staff Present:** Holly Jordan, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 42, 2/19/2001; SB 91,  
2/19/2001; SB 33, 3/5/2001  
Executive Action: SB 33; SB 42; SB 91

HEARING ON SB 42

Sponsor: SEN. BEA MCCARTHY, SD 29, Anaconda

Proponents: Susan Cottingham, RWRCC

Opponents: None.

Opening Statement by Sponsor:

*{Tape : 1; Side : A; Approx. Time Counter : 0.1}*

SEN. BEA MCCARTHY, SD 29, Anaconda, stated this is a simple bill. She stated Ms. Cottingham would explain the bill.

Proponents' Testimony:

*{Tape : 1; Side : A; Approx. Time Counter : 1.1}*

Susan Cottingham, RWRCC, stated, two years ago RWRCC reached a settlement with the U.S. Fish and Wildlife Service for the Redrocks National Wildlife Refuge. It was passed, almost unanimously, by both houses. After the legislature a hydrologist was reviewing the consumptive use chart and noticed a couple of legal land descriptions that were incorrect. This bill corrects those errors. She passed out a letter **EXHIBIT(nah52a01)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

*{Tape : 1; Side : A; Approx. Time Counter : 4}*

REP. BROWN asked SEN. MCCARTHY where this is located. SEN. MCCARTHY stated it is Southeast of Dillon, MT.

Closing by Sponsor:

*{Tape : 1; Side : A; Approx. Time Counter : 4.7}*

SEN. MCCARTHY stated REP. WANZENRIED will carry the bill on the floor.

HEARING ON SB 33

Sponsor: SEN. BEA MCCARTHY, SD 29, Anaconda

**Proponents:** Janet Ellis, Montana Audubon  
Ellen Engstedt, Montana Wood Products  
Nancy Schlepp, Montana Farm Bureau  
John Bloomquist, Montana Stockgrowers Association  
Don Allen, WETA  
Mike Murphy, MWRA  
Dexter Busby, Montana Refining Company - Great Falls

**Opponents:** None.

**Opening Statement by Sponsor:**

*{Tape : 1; Side : A; Approx. Time Counter : 5.1}*

SEN. BEA MCCARTHY, SD 29, Anaconda, stated, this is simply an act clarifying existing law to require that new issues not first presented to a state agency, in an action challenging a decision under the Montana Environmental Policy Act, must be remanded by the District Court, to the agency, for it's consideration before they can be reviewed by the court. It is a clean up to make sub-section B of the law consistent with sub-section A.

**Proponents' Testimony:**

*{Tape : 1; Side : A; Approx. Time Counter : 6.1}*

Don Allen, WETA, stated he supports this clarifying bill.

Ellen Engstedt, Montana Wood Products, stated she supports SB 33.

Nancy Schlepp, Montana Farm Bureau, stated she supports SB 33.

Janet Ellis, Montana Audubon, stated she supports SB 33. It makes the language consistent and helps MEPA work.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:** None.

**Closing by Sponsor:**

*{Tape : 1; Side : A; Approx. Time Counter : 8}*

SEN. MCCARTHY asked REP. YOUNKIN to carry SB 33.

HEARING ON SB 91

Sponsor: SEN. BILL TASH, SD 17, Dillon

Proponents: Ray Beck, DNRC

Nancy Schlepp, Montana Farm Bureau

Sarah Carlson, Montana Association of Conservation  
Districts

Dore Schwinden, Montana Farmers Union

John Bloomquist, Montana Stockgrowers Association

Mike Murphy, MWRA

Opponents: None.

Opening Statement by Sponsor:

*{Tape : 1; Side : A; Approx. Time Counter : 8.4}*

SEN. BILL TASH, SD 17, Dillon, stated, SB 91 makes livestock containment facilities eligible for loans from the Renewable Resource Grant and Loan Program. This is in the interest of water quality standards that can and should be met.

Proponents' Testimony:

*{Tape : 1; Side : A; Approx. Time Counter : 9.9}*

Ray Beck, DNRC, stated this piece of legislation adds the containment facilities in the eligibility list for the loan program. The Renewable Resource Loan Program was established by the legislature in 1981. Individuals, partnerships, associations and corporations are eligible for the funds. All projects must be water related. This is a good piece of legislation.

Sarah Carlson, Montana Association of Conservation Districts, stated this piece of legislation is a good tool.

Mike Murphy, MWRA, stated that he supports SB 91.

Nancy Schlepp, Montana Farm Bureau, stated that she supports SB 91.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

*{Tape : 1; Side : A; Approx. Time Counter : 12.5}*

**REP. STORY** asked **Mr. Beck** where the money for these loans comes from. **Mr. Beck** stated, it comes from general obligation bond sales and grant dollars. **REP. STORY** asked **Mr. Beck** if there is a possibility for grant money in this also. **Mr. Beck** stated there is a possibility but the grants are restricted to public entities and these are for private loans.

**REP. ERICKSON** asked **Mr. Beck** if this fund gives loans to ranchers to build fences. **Mr. Beck** stated fences would certainly qualify. **REP. ERICKSON** asked **Mr. Beck** to tell the committee about the other ways this money is spent where money is loaned for commercial operations. **Mr. Beck** stated most of the money is used for irrigation development. In most cases it is paying for conversions from flood irrigation to pivot sprinklers.

**REP. CURTISS** asked **Mr. Beck** aren't there some projects now where they are fencing portions of streams to protect the water quality? Is that through Fish and Game or Conservation Districts? **Mr. Beck** stated there are several sources where funding can be provided for fencing streams.

**REP. HURDLE** asked **Mr. Beck** so is this money to be used in a measurable way to preserve ground water quality? **Mr. Beck** stated, that is correct. **REP. HURDLE** asked if it is inconceivable that a big sewage treatment system may be required in some cases. **Mr. Beck** stated there are not any of those in the state of Montana at this time. **REP. HURDLE** asked how much money is available for loans? **Mr. Beck** stated, there is a maximum loan of \$200,000.

**REP. ERICKSON** asked **Mr. Beck** what is the source of all of these funds? **Mr. Beck** stated, general obligation bonds.

**REP. HARRIS** asked **Mr. Beck** have you had any defaults on any of these loans? **Mr. Beck** stated, yes. We have made 193 loans and currently have 128 active loans. Two of the current loans are being watched due to bankruptcy and foreclosure. **REP. HARRIS** asked if the banking industry has ever expressed concerns over these loans? **Mr. Beck** stated, they have not. In most cases the financial institutions support this type of loan because it is not something they make but it does increase the net worth of the individual which helps them with their operating loans.

**Closing by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 20.5}***

**SEN. TASH** stated, in order to find collaborative ways to satisfy conservation practices it is becoming more and more of a concern with agriculturists to practice good conservation practices. There is sometimes a difficulty finding money to pay for these. He gave some examples of where this funding comes in handy. He stated **REP. BALES** may carry this bill.

**EXECUTIVE ACTION ON SB 91**

**{Tape : 1; Side : A; Approx. Time Counter : 23.7}**

**Motion:** **REP. BALES** moved that **SB 91 BE CONCURRED IN.**

**Discussion:**

**REP. ERICKSON** asked **REP. BALES** are most livestock containment facilities simply fences over a big area or are these cows in a small area? How many of those are there in the state? **REP. BALES** stated livestock containment facilities are what you would consider feedlots, dairy, etc. DEQ has requirements placed on those facilities to have containment facilities for water runoff, etc. This bill will allow those people to get low interest loans to build those facilities that will comply with DEQ's regulations and requirements. **REP. ERICKSON** asked **REP. BALES**, regarding the "venture cow" bill brought forth in 1999, is this bill going to end up helping those same folks in getting further loans? Who and how many people are going to use this? **REP. BALES** stated "venture cow" is working very well. This will probably go to some existing feed lots that are trying to get into compliance.

**REP. LASZLOFFY** asked **REP. ERICKSON** if he is concerned that these dollars will be used to expand production facilities and not use the dollars for water related projects. **REP. ERICKSON** stated, it seems that this is a major expansion of the way that we now spend money from these bond funds. He is concerned with what this policy change will do in the long run. **REP. LASZLOFFY** asked if he thinks there is a risk for other potential problems in this. **REP. ERICKSON** stated, yes.

**REP. STORY** stated this could apply to a lot of people. The people that would probably be using this most are just family sized operations. He spoke of his own involvement in this issue.

**REP. CURTISS** stated this is a real conservation measure. It is a real good step to help some people who really need help.

**REP. ERICKSON** asked **Mr. Beck** if this will work out to help the small family businesses and is that the way the rules will go.

**Mr. Beck** stated yes. This program has been in effect since 1981. There are no corporate farms that have borrowed money. They don't want government holding security on any of their property.

**REP. BALES** asked **Mr. Beck** if there is a limit on the amount per loan. **Mr. Beck** stated yes, there is a limit of \$200,000.

**REP. STORY** asked **Mr. Beck**, regarding line 20 of the existing law, do you have any loans out for natural resource based recreation? **Mr. Beck** stated, we do not.

**REP. GUTSCHE** asked **Mr. Beck** is there \$8.7 million currently loaned out? **Mr. Beck** stated yes. **REP. GUTSCHE** asked, under rule making do you prioritize how the loans go out? **Mr. Beck** stated, there is not a prioritized list. There are criteria that the applicant must qualify under to receive funds. **REP. GUTSCHE** asked, what is the cap on the bonds? **Mr. Beck** stated, \$20,000,000. **REP. GUTSCHE** asked, if prioritizing came up would it be solved in rule making? **Mr. Beck** stated that would have to be addressed at the department level.

**REP. BALES** stated, other projects have been approved to clean up possible water problems. This is a win, win situation for everybody.

**Vote:** Motion on SB 91 **carried unanimously.**

#### **EXECUTIVE ACTION ON SB 42**

***{Tape : 1; Side : A; Approx. Time Counter : 42.5}***

**Motion/Vote:** **REP. ERICKSON** moved that **SB 42 BE CONCURRED IN.**  
**Motion carried unanimously.**

#### **EXECUTIVE ACTION ON SB 33**

***{Tape : 1; Side : A; Approx. Time Counter : 44.1}***

**Motion:** **REP. BROWN** moved that **SB 33 BE CONCURRED IN.**

#### **Discussion:**

**REP. LASZLOFFY** asked **REP. YOUNKIN**, if this has not gone before the agency already how did an issue become an issue? **REP. YOUNKIN** gave a background on the bill. The word "issue" makes the law consistent throughout. **REP. LASZLOFFY** asked, if an issue may not go to the District Court before being presented to the agency but if it hasn't been presented to an agency how did it

become an issue in the first place? Who made it an issue? Where is the conflict? **REP. YOUNKIN** stated, these issues are evidence being brought to the District Court that had never been considered by the agency in the first place. It's like bringing up a new issue on appeal and you can't do that. That was the reason the bill was brought about in the first place. **REP. LASZLOFFY** referred to page 3, line 19, stating, obviously the agency had a finding so obviously the issue was before the agency at some point? **REP. YOUNKIN** stated, before you can get to that point you have to go through everything else. **REP. LASZLOFFY** asked for an example. **REP. YOUNKIN** deferred the question to **Mr. Mitchell**. **Mr. Mitchell** stated, remember we are talking about MEPA issues here. This was the issue that was characterized as "laying in the weeds" and springing something on the agency at the last minute. He gave an example of the Middle Soup Creek Timber Sale.

**REP. HARRIS** stated, there are purely legal issues that would be appropriate for the court to look at. To remand those issues back to the agency, who has no expertise on these issues, would be wrong. Do we need to do this for every single issue?

**REP. YOUNKIN** stated, those are legal issues and not factual issues. This process involves factual issues not legal issues.

**REP. HARRIS** stated he must have misread the bill. He looked over the bill. He then stated that he would not change his position. The bill doesn't necessarily refer to just factual issues. It says "or issues". There might be a whole series of issues that would be considered legal issues.

**REP. EGGERS** asked **REP. YOUNKIN**, did you intend both legal and factual issues to be remanded? **REP. YOUNKIN** stated there was no intent to remand legal issues. She could not imagine any circumstance where subject matter jurisdiction, etc., would be discussed. This regards whether an environmental assessment was adequate or not.

**REP. HARRIS** spoke of a possible amendment to the bill.

**REP. YOUNKIN** stated she doesn't think the issue merits an amendment. This whole thing was discussed in EQC and in public hearing and nobody else brought it up.

**Motion:** **REP. HARRIS** moved that an **AMENDMENT TO ADD TO PAGE 3, LINE 10, LINE 14 - LINE 18, BEFORE THE WORD "ISSUES" "FACTUAL ISSUES OR ISSUES OF MIXED FACT AND LAW" BE ADOPTED.**

**Discussion:**



**REP. HARRIS** stated, it means issues that are purely legal in nature can be considered by the court.

**REP. LASZLOFFY** asked **REP. YOUNKIN** what her opinion on the amendment is. **REP. YOUNKIN** stated she would resist the amendment. It tends to confuse the law.

**REP. LASZLOFFY** stated that he is against the amendment at this point.

**Vote:** Motion to amend the bill **failed 5-15 with Eggers, Erickson, Gutsche, Harris, and Hurdle voting aye.**

**Vote:** Motion that **HB 33 BE CONCURRED IN** carried unanimously.

**REPORT ON HB 69**

***{Tape : 1; Side : B; Approx. Time Counter : 0.6}***

**REP. DALE** gave a report on the status of the HB 69 sub-committee.

**ADJOURNMENT**

Adjournment: 4:15 P.M.

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REP. CINDY YOUNKIN, Chairman

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HOLLY JORDAN, Secretary

CY/HJ

**EXHIBIT (nah52aad)**